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not have been prejudiced by the action of the court in giving the instructions given, or in refusing those which were rejected.

COTTRELL AND ANOTHER V. WATKINS AND ANOTHER.—Decided at Richmond, March 9, 1899.—*Buchanan, J. Absent, Cardwell, J:*

1. **EVIDENCE**—*Death of party to transaction*—*Survivor may be called by adversary*—*Collusion*—*Case in judgment*. Although one of the parties to the original transaction which is the subject of investigation be dead, the survivor may be called as a witness by the administrator of the deceased party under the terms of section 3346 of the Code. In the case in judgment, the decedent's estate is interested in the result, and it is not shown that his administrator colluded with the survivor, even if such collusion could be considered in passing on the admissibility of the evidence.

2. **RES JUDICATA**—*Law of the case*—*Case in judgment*—*Laches*—*Transfer of accommodation paper after maturity*. Questions decided upon an appeal cannot be reviewed or reversed upon any subsequent appeal in the same case. The first decision becomes the law of the case. In the case in judgment the first decision having determined that the complainant had not been guilty of laches, and that the transferee of accommodation negotiable paper after maturity stands on the same footing as if the paper were ordinary negotiable paper given for value, these questions are not now open to a new contention.

STREET V. BROADDUS.—Decided at Richmond, March 9, 1899.—*Keith, P. Absent, Cardwell, J:*

1. **DEPUTY TREASURERS**—*Penalties*—*Section 854 of Code*—*Interest on verdict*—*Affidavits of jurors*. The penalties imposed on deputy treasurers by section 854 of the Code for failure to collect or pay over taxes are not to be extended by implication. The party seeking to recover such penalties must bring himself strictly within the terms of the section. It is the duty of the jury to ascertain the amount and date of the default, and to render verdict for this sum with the penalty added. Judgment should be rendered for the amount of the verdict, with interest at six *per cent. per annum*, as the penalty does not extend beyond the verdict. If there is doubt as to whether the jury imposed the penalty, this doubt cannot be resolved by the affidavits of the jurors, but the verdict will be presumed to be correct.

2. **NEW TRIALS**—*Verdict*—*Affidavits of jurors*. As a general rule affidavits of jurors as to the manner in which they arrived at their verdict will not be received, though there may be instances in which they will be received in order to prevent a failure of justice.

DAVIS V. HEPPERT AND OTHERS.—Decided at Richmond, March 9, 1899.—*Harrison, J. Absent, Cardwell, J:*

1. **LIFE ESTATE WITH UNLIMITED POWER OF ALIENATION**—*Fee simple*. An estate for life, coupled with the absolute and unlimited power of alienation of the fee, express or implied, comprehends everything, and constitutes a fee simple estate.